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**THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,**  
**AT JABALPUR**

**(FULL BENCH)**

**WP-1539-2018**

**Arun Parmar** ..... Petitioner

Vs.

**State of Madhya Pradesh and others** ..... Respondents

**WITH**

**WP-1541-2018**

**Vivek Shrotriya** ..... Petitioner

Vs.

**Chief Secretary Government of MP and others** ..... Respondents

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**WP-1712-2018**

**Warad Murti Mishra** ..... Petitioner

Vs.

**Chief Secretary Government of MP and others** ..... Respondents

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**WP-2644-2018**

**Smt. Manisha Sentiya** ..... Petitioner

Vs.

**State of Madhya Pradesh and others** ..... Respondents

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**WP-3706-2018**

**Smt. Bharati Ogrey** ..... Petitioner

Vs.

**State of Madhya Pradesh and others** ..... Respondents

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**WP-3716-2018**

**Rajesh Ogrey** ..... Petitioner

Vs.

**State of Madhya Pradesh and others** ..... Respondents

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**WP-16735-2018**

**Vinay Nigam** ..... Petitioner

Vs.

**State of Madhya Pradesh and others** ..... Respondents

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**Coram:**

**Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice**

**Hon'ble Mr. Justice Rajeev Kumar Dubey, Judge**

**Hon'ble Mr. Justice Vijay Kumar Shukla, Judge**

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**Presence:**

Mr. Naman Nagrath, Senior Advocate assisted by Mr. Anvesh Shrivastava and Mr. Jubin Prasad, Advocates for the petitioners in WP-2644-2018, WP-3706-2018 & WP-3716-2018.

Mr. Anshuman Singh, Advocate for the petitioner in WP-1541-2018.

Mr. Manoj Kumar Sharma, Advocate for the petitioners in WP-1539-2018, WP-1712-2018 & WP-16735-2018.

Mr. Pushpendra Yadav, Additional Advocate General for the respondents-State.

Mr. Abhishek Arjaria, Advocate for the intervenor- Dr. Kedar Singh in WP-1539-2018.

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*Whether approved for reporting: Yes*

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***Law Laid Down:***

Division Bench of this Court vide order dated 30.05.2019 passed in bat ch of W.P. No.1539/2018 has doubted the correctness of Full Bench decision in ***State of M.P. vs. Prakash Chandra Jangre*** (in fact, said judgment was delivered in lead case being ***Masood Akhtar (Dr.) vs. R.K. Tripathi*** in 2012 (I) MPJR (FB) 375 and was affirmed on dismissal of SLP and Review Petitions reported as ***State of M.P. vs. Masood Akhtar, 2017 SCC OnLine SC 1972*** and ***State of M.P. vs. Masood Akhtar, 2018 SCC OnLine SC 3568***). Doubt is primarily on the ground that Full Bench had failed to consider Rule 13 of the Madhya Pradesh State Administrative Service Classification, Recruitment and Conditions of Service Rules, 1975 inasmuch as that the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 would not apply as according to its Rule 12(1)(a), the Rules of 1961 apply to the "members of the service" only. The Bench has referred the matter to Larger Bench. The order dated 30.05.2019 has been assailed in ***Special Leave to Appeal (C) No.14036/2019 (Warad Murti Mishra vs. State of M.P. &***

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*another*) on the ground that Full Bench decision in **Masood Akhtar (Dr.)** having attained finality, reference to the Larger Bench was incompetent. The Supreme Court in its judgment reported as **(2020) 7 SCC 509** held that: *Whether the reference was justified or not will certainly be considered by the bench answering the reference. We, however, accept the latter submission and direct that the matters shall first be placed before a bench of three Judges, which may consider whether the decision [Prakash Chandra Jangre (supra)] of the Full Bench on the earlier occasion requires reconsideration.*

<p>In view of the said fact, the <b>PRIMARY QUESTION</b> before the Full Bench is:</p> <p><i>Whether or not, the reference made by the Division Bench is legally justified?</i></p>	<p><b>ANSWER:</b></p> <p>Since we agree with the ultimate conclusion arrived at by the Full Bench in <i>Masood Akhtar (Dr.) (supra)</i> despite giving additional reasons for our view, we are not persuaded to hold that the Full Bench has not correctly answered the reference. We therefore see no justification to further refer this matter to a Larger Bench consisting of five Judges.</p>
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<p><b>Question No.1:</b></p> <p>The judgment of the Full Bench dealing the issues of probation is relying upon the Rule 8 of the Rules of 1961 although in the light of Rule 3 which deals the applicability either in the Rules of 1961 or in the Rules of 1975 on having special provision, the Rules of 1961 would not apply and in the present case, the services of the petitioners or the intervenors are governed by the Rules of 1975 and Rule 13 deals the issue of probation, however, the judgment of the Full Bench requires reconsideration in the said context ?</p>	<p><b>ANSWER:</b></p> <p>A comparison of Rule 8(7) of the Rules of 1961 with Rule 13(7) of the Rules of 1975 would clearly show that there is, in fact, no difference between those two sub-rules. Therefore, in our considered view, the opinion expressed by the Division Bench while making reference in para-21 of its order that in view of the above fact, Rule 13(7) of the Rules of 1975 would govern the issue and not the Rule 8(7) of the Rules of 1961 and so, the conclusion arrived at by the Full Bench in para 11(iv) of its judgment in <i>Masood Akhtar (Dr.) (supra)</i> may not subsist, does not sound convincing. Therefore, even while observing that the Full Bench in <i>Masood Akhtar (Dr.) (supra)</i> ought to have considered the Rule 13 of the Rules of 1975, we are inclined to hold that its non-consideration does not in any manner affect the correctness of the conclusion arrived at by the Full Bench. And now when we have considered and interpreted the Rule 13 of the Rules of 1975 we have also arrived at the same conclusion as the Full Bench has recorded in <i>Masood Akhtar (Dr.) (supra)</i> on harmonious interpretation of</p>
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	<p>Rule 12(1)(a) and 12(1)(f) of the Rules of 1961. When we compare Rule 3 of the Rules of 1961 with the Rule 3 of Rules of 1975, in regard to applicability of the Rules of 1961 and/or Rules of 1975, the Rules of 1975 would govern the conditions of service of the members of the Madhya Pradesh State Administrative Services but without prejudice to the generality of the Rules of 1961. What therefore can be deduced from this is that the Rules of 1961 shall continue to apply except insofar as special provisions have been made in the Rules of 1975.</p>
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<b><u>Question No.2:</u></b>	<b>ANSWER:</b>
<p>Rule 12 and Rule 12(1)(a) apply to the “members of the service” and it do not deal with the seniority of the probationers, who have not qualified the departmental examination within the period of probation or within the extended period of probation, which shall not be more than one year, however, the interpretation made in Paragraph No.4 of the direction applying those rules is justified ?</p>	<p>Full Bench in <i>Masood Akhtar (Dr.) (supra)</i> has, while making a conjoint reading of the Rule 12(1)(a) and 12(1)(f) of the Rules of 1961 has placed harmonious interpretation so as to reconcile them, which would be evident from the conclusion arrived at by the Bench in para 11 of its judgment.</p>

<i>Additional Question</i> in the light of observation in <i>Warad Murti Mishra (supra)</i> :	<b>ANSWER:</b>
<p>Whether it was permissible for the Full Bench in <i>Masood Akhtar (Dr.) (supra)</i>, despite the Supreme Court consistently holding in above referred to three judgments that direct recruits not having qualified the departmental examination even within the extended period of service could not be treated as member of service and therefore cannot claim seniority of that period?</p>	<p>On comparison of the unamended Rule 12 of the Rules of 1961 on interpretation of which the ratio of the three judgments of the Supreme Court in <i>M.P. Chandoria (supra)</i>; <i>Ramkinkar Gupta (supra)</i> and <i>Om Prakash Shrivastava (supra)</i> is founded, with the newly inserted Rules 12(1)(a) and (f) of the Rules of 1961 by way of substitution, which have been interpreted by the Full Bench in <i>Masood Akhtar (Dr.) (supra)</i>, insofar as the question of seniority is concerned, it is clear that amended Rule 12 has taken away the very basis of the aforementioned three judgments of the Supreme Court and, therefore, ratio of those judgments cannot be applied to</p>

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	the present case. The rule making authority has now in the amended Rule 12 categorically provided that the persons appointed as a result of an earlier selection shall always rank senior to those appointed as a result of subsequent selection, thus manifesting a different intention than the one expressed in unamended Rule 12 of the Rules of 1961.
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<b><u>Question No.3:</u></b>	<b><u>ANSWER:</u></b>
As per direction No.2 of the judgment of the Full Bench in the case of <b>Prakash Chandra Jangre (supra)</b> , it is held that if the probationer has not qualified the departmental examination within the period of probation or within the extended period of probation, he shall be deemed to be a temporary government servant and shall be governed by the Rules of 1960 but without dealing the issue of seniority, how they will achieve, as specified in Rules 3, 3A, 4, 5, 6, 7, the direction issued in Clause 4 of the said judgment, is not contrary to the spirit of the Rules of 1960.	<p>The view taken by the Division Bench that once the probationer has not cleared the prescribed departmental examination even within the extended period of probation, he would be deemed to be a temporary Government servant governed by the Rules of 1960 and therefore the conclusion arrived at in para 11(iv) of the Full Bench is not correct, also cannot be supported because the Rules of 1960 (<i>Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960</i>) do not, in any case, provide for the manner in which the seniority of the persons recruited under the Rules of 1975 would be regulated.</p> <p><b><u>List of Cases Referred:</u></b>  <i>(1989) 3 SCC 211 (Buxa Dooars Tea Co. Vs. State of WB)</i>  <i>(1992) 3 SCC 293 (Lilasons Breweries vs. State of MP)</i>  <i>(1996) 11 SCC 173 Chandoria vs. State of M.P. &amp; others</i>  <i>(2000) 10 SCC 77 (State of M.P. vs. Ramkinkar Gupta)</i>  <i>(2005) 11 SCC 488 (Om Prakash Shrivastava vs. State of MP)</i>  <i>(2015) 8 SCC 399 (Agricultural Income Tax Officer and another vs. Goodricke Group Limited)</i>  <i>(2017) 13 SCC 836 (State of MP vs. Kedi Great Galeon Ltd)</i></p>

<b><u>Further Held:</u></b>	It is a trite that a judgment for the purpose of precedent can be relied upon for the proposition of law that it actually decided and not for what can be logically deduced from it, for
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	<p>difference of a minor fact would make a lot of change in the precedential value of the judgment.</p> <p><b>Referred:</b> House of Lords judgment reported as [1901] A.C. 495 titled <i>Quinn v. Leathem</i> (16 of 21) [CW-13989/2009].</p>
	<p>A statute must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between the two sections of the same Act and whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise.</p> <p><b>Reliance placed upon:</b> <i>AIR 1954 SC 202 (Raj Krushna Bose vs. Binod Kanungo and others),</i> <i>AIR 1962 SC 1543 (Madanlal Fakirchand Dudhediya vs. Shree Changdeo Sugar Mills Ltd.)</i> <i>(2002) 2 SCC 95 (British Airways vs. Union of India)</i></p>

<b>Significant Paras:</b>	<b>15 to 31</b>
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Heard on : 15.03.2021

**ORDER**

(Passed on this \_\_\_ day of April, 2021)

**Per: Mohammad Rafiq, Chief Justice**

These matters have been laid before the Larger Bench upon a reference made by the Division Bench of this Court, doubting correctness of the earlier decision of the Full Bench, consisting of three Judges, in *Masood Akhtar (Dr.) vs. R.K. Tripathi* reported in 2012 (I) MPJR (FB) 375 : 2012 SCC OnLine MP 11024. (Though

the Division Bench in the reference order has mentioned ***Prakash Chandra Jangre (State of Madhya Pradesh and another vs. Prakash Chandra Jangre)*** as the main case, but the lead judgment of the Full Bench was delivered in ***Masood Akhtar (supra)***.) It may be noted at the outset that the aforementioned decision of Full Bench was challenged by the State of Madhya Pradesh by filing ***Special Leave Petition (Civil) No.20288/2012 (State of M.P. vs. Masood Akhtar)*** and other connected matters, which were dismissed by the Supreme Court vide order dated 01.09.2017 (**2017 SCC OnLine SC 1972**). Thereafter, ***Review Petition (Civil) No.2663/2018, (State of M.P. vs. Masood Akhtar)*** arising therefrom was also dismissed by the Supreme Court vide order dated 18.09.2019 (**2018 SCC OnLine SC 3568**). Referring to the aforesaid decision of the Full Bench of this Court in ***Masood Akhtar (Dr.) (supra)***, the Division Bench of this Court by order under reference dated 30.05.2019, doubting correctness of the same, made the reference by the following order:

“22. In view of the foregoing observations, we deem it appropriate to refer the judgment of the Full Bench to the Larger Bench to answer the aforesaid issues.

23. Registrar (Judicial) is requested to place the matter before Hon’ble the Chief Justice to do the needful and to take appropriate steps in this regard in view of the foregoing observations.”

2. The writ petitioners before this Court, challenging the aforesaid order dated 30.05.2019 passed by the Division Bench making reference to the Full Bench, filed ***Special Leave to Appeal (C) No.14036/2019 (Warad Murti Mishra vs. State of M.P. & another)***

and connected matters. The Supreme Court by detailed order dated 11.07.2019 initially stayed the operation of the aforequoted paras-22 & 23 of the order passed by the Division Bench and issued notices. Thereafter, the Supreme Court after granting leave finally decided all the appeals vide judgment dated 15.06.2020, reported in **(2020) 7 SCC 509**. Apart from merits of the case, it was also argued before the Supreme Court that since reference to the Full Bench in *Masood Akhtar (Dr.) (supra)* was made on account of divergent views expressed by two Division Benches of this Court, with the dismissal of SLP as well as review petition arising therefrom, by the Supreme Court, the Full Bench judgment in *Masood Akhtar (Dr.) (supra)* having attained finality, the Division Bench was bound to follow the decision of the Full Bench and, therefore, reference to the Larger Bench was incompetent. Reliance was placed on the judgments of the Supreme Court in *Pradi Chandra Parija vs. Pramod Chandra Patnaik* reported in **(2002) 1 SCC 1** and *Sakshi vs. Union of India* reported in **(2004) 5 SCC 518** to argue that no reference could and ought to have been made unless the earlier decisions were so “palpably wrong” or so “very incorrect” that reference was called for and in any case the reference ought to have been made to a Bench of equal strength (three Judges) keeping in view the law laid down by the Supreme Court in *Central Board of Dawoodi Bohra Community vs. State of Maharashtra* reported in **(2005) 2 SCC 673**. It was also argued that the Full Bench in *Masood Akhtar (Dr.) (supra)* failed to consider binding decision of the Supreme Court in *M.P. Chandoria*



*vs. State of M.P. & others* reported in (1996) 11 SCC 173, *State of Madhya Pradesh vs. Ramkinkar Gupta* reported in (2000) 10 SCC 77 and *Om Prakash Shrivastava vs. State of M.P.* reported in (2005) 11 SCC 488. The Supreme Court disposed of the appeals with the following observations as contained in Paras-22 & 24 of the report, which reads as under:

“22. It is true that the decisions of the Division Bench and the Full Bench [*Prakash Chandra Jangre (supra)*] were challenged and not only the Special Leave Petitions (*State of M.P. vs. Sandeep Kumar Mawkin, 2010 SCC Online SC 86*) but the Review Petitions were also dismissed. But as observed by the Division Bench (*Ward Murti Mishra vs. State of M.P., WP No.1712/2018, order dated 30.05.2019 [MP]*) in the instant case, the effect of Rule 13 of 1975 Rules was not considered on the earlier occasions. Since the Division Bench (*Ward Murti Mishra vs. State of M.P., WP No.1712/2018, order dated 30.05.2019 [MP]*) has now made a reference to a larger bench, we do not propose to enter into the matter and decide the controversy but leave it to the High Court to consider and decide all the issues.

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24. Whether the reference was justified or not will certainly be considered by the bench answering the reference. We, however, accept the latter submission and direct that the matters shall first be placed before a bench of three Judges, which may consider whether the decision [*Prakash Chandra Jangre (supra)*] of the Full Bench on the earlier occasion requires reconsideration. The bench may consider the effect of non-consideration of Rule 13 of 1975 Rules on the earlier occasion as well as the impact of the decisions of this Court quoted hereinabove on the controversy in question. The matters shall be considered purely on merits and without being influenced by the dismissal of Special Leave Petitions by this Court on the earlier occasions or dismissal of the Review Petitions. We have not and shall not be taken to have expressed any view touching the merits of the matters.”

3. In view of above, the question that is required to be considered at the outset is whether or not, the reference made by the Division Bench is legally justified? If eventually we are persuaded to hold that the conclusion arrived at by the Full Bench in *Masood Akhtar (Dr.) (supra)* was not legally correct, because it failed to specifically consider the effect of Rule 13 of Madhya Pradesh State Administrative Service Classification, Recruitment and Conditions of Service Rules, 1975 (of short the “Rules of 1975”) and also failed to consider above referred to three decisions of the Supreme Court, would the question of referring the matter to a Larger Bench consisting of five Judges arise.

4. In order to appreciate the controversy, it has to be examined first of all as to what was the precise question on which reference was made to the Full Bench in *Masood Akhtar (Dr.) (supra)* and how has the same been answered. The Division Bench of this Court vide order dated 25.03.2009, passed in *Writ Appeal No.1267/2007 (State of M.P. and another vs. Prakash Chandra Jangre and others)* held that the seniority of a probationer would be counted from the date he passes the requisite departmental examination. Another Division Bench of this Court vide order dated 17.12.2009 passed in *Writ Appeal No.510/2009 (Suresh Kumar vs. State of M.P. & others)* and other connected matters held that even though a probationer may not have completed his probation period successfully, yet he would be senior to

the persons, who have been selected/appointed in the subsequent selection process. In view of such conflicting opinions, the Division Bench of this Court vide order dated 22.09.2011 passed in *Writ Appeal No.607/2011 (Dr. Masood Akhtar vs. R.K. Tripathi)* and other connected matters, referred the matter to the Full Bench. The Full Bench while considering the reference as to which of the two views taken by the aforesaid Division Benches is correct, framed two questions, namely:- (i) what are the parameters on which the discretion conferred on appointing authority under Rule 12(1)(f) to assign lower seniority to probationer who has either not satisfactorily completed the period of probation or has not passed the departmental examination, has to be exercised and (ii) what is the interpretation of Rule 12(1)(a) and Rule 12(1)(f) of the Rules of 1961. It was this reference which was answered by the Full Bench on consideration of Rules 8, 12(1)(a) and 12(1)(f) of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 (for short “the Rules of 1961”) in Paras-5 to 12 of its order in *Masood Akhtar (Dr.) (supra)*, in the following terms:

“5. From the conjoint reading of the aforesaid rules it is clear that every person appointed to a service or post is initially placed on probation for the prescribed period. The probation can be extended for sufficient reasons by the appointing authority for a further period not exceeding one year. The extension of period of probation may be made, *inter alia* due to the following reasons:

(I) a probationer fails to pass the departmental examination where passing of such examination is a condition precedent for confirmation.

(II) although the probationer clears the departmental examination but his performance is not satisfactory during period of probation.

(III) non-availability of a permanent post for the purposes of confirmation.

(IV) non-consideration of case for confirmation of a probationer by the confirming authority.

Except in cases where an order of termination of service of a probationer is passed either during the initial period of probation or at the end of the extended period of probation, there may be two kinds of cases:

(I) where the confirming authority has passed an order expressly extending the period of probation.

(II) where the confirming authority has not passed any order either extending the period of probation or of confirming services of the probationer.

6. In the second contingency mentioned above, *i.e.* where the confirming authority has not been able to apply its mind or to take a decision on the question whether to confirm or not to confirm the probationer at the end of initial period of probation and whether or not the probationer has cleared the departmental examination, the scheme of the Rule 8 quoted above suggests that the probation period shall be deemed to have been extended by one year, which is the maximum permissible period of extension. At the end of the extended period of probation, when no further extension of period of probation is permissible, the status of the probationer in the eye of law will be that of a deemed confirmed employee where he has passed the departmental examination and where passing of such departmental examination is the condition precedent for confirmation either in the rules or in the order of appointment. This view finds support from the decisions in *High Court of M.P. through Registrar and others v. Satya Narayan Jhavar* (2001) 7 SCC 161 and *Rajindra Singh Chouhan* (2005) 13 SCC 179. Moreover taking the other view *i.e.* an employee does not get status of confirmed employee on successful completion of period of probation and on passing the departmental examination would bring in operation rule 8(7) of the 1961 Rules which would confer

the status of a temporary employee on the probationer. We are not inclined to adopt the aforesaid interpretation since the same is contrary to rule 8(2) of the 1961 Rules which prescribes the maximum period of probation. Besides that, by such an interpretation, the confirming authority can destroy the service career of a probationer merely by indecision in the matter of confirmation of such an employee. However, where the probationer at the end of extended period of probation has not been able to pass the departmental examination and that passing of the departmental examination is mandatory for confirmation, and confirmation has neither been granted nor refused the probationer will be deemed to have been refused confirmation at the end of maximum permissible period of probation, because even if the confirming authority would have actually considered the case of probationer for confirmation, it would have no option except to refuse confirmation on the ground that the probationer had not passed the departmental examination. The case of such a probationer would be covered by rule 8(7) quoted above and he will be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his condition of service shall be covered by the 1960 Rules.

7. Now we may advert to rule 12(1)(f) of the 1961 Rules. The aforesaid rule confers discretion on the appointing authority in case of a probationer who has not successfully completed the period of probation or has not passed the examination either to assign him the same seniority which would have been assigned to him, if he had completed the normal period of probation successfully or to assign him lower seniority. The aforesaid statutory discretion has to be exercised on a rational and reasonable criteria and cannot be permitted to be exercised either arbitrarily or capriciously which is anathema, to the rule of law envisaged in Article 14 of the constitution. [See: *BEML Employees House Building Cooperative Society Ltd. v. State of Karnataka and others*, (2005) 9 SCC 248]

8. In our opinion, allowing such probationer to retain original seniority would have to be confined to cases where such extension of probation is not due to any fault or shortcoming on part of the employee concerned. For example, where the employee could not appear at the departmental examination on account of illness or

such other cause beyond the control of the employee or where some departmental inquiry was pending in which the employee is ultimately exonerated. The above contingencies are only illustrative and not exhaustive.

9. However, where the extension of probation is made due to any shortcoming of the employee, like not being able to pass the departmental examination or not performing well during the initial period of probation, his seniority would have to be pushed down and in that case also the question would arise as to the extent of assignment of lower seniority to such an employee. Again decision in this regard cannot be left to whim and caprice of appointing authority but the same has to be based on rational and reasonable criteria.

10. In our considered opinion, in such an event, such a probationer would have to be assigned a seniority calculated from the date on which he actually overcomes the shortcomings, if that date can be ascertained. For example the date on which he passes the departmental examination and if such date cannot be ascertained, then from the date on which he is considered and found fit to be confirmed.

11. Now we may advert to the second issue, namely, interpretation of rule 12(1)(a) and (f) of the 1961 Rules. It is well settled rule of statutory interpretation that subsections of a section must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. [See: *British Airways v. Union of India*, (2002) 2 SCC 95] Rule 12(1)(a) of the 1961 Rules *inter alia*, provides that persons appointed as a result of earlier selection shall be senior to those appointed as a result of subsequent selection whereas rule 12 (1)(f) confers discretion on the appointing authority to assign the same seniority or to assign lower seniority to a probationer whose probation or testing period is extended. In the light of aforesaid well settled rule of statutory interpretation the discretion conferred on the appointing authority to assign lower

seniority to an employee under rule 12(1)(f) of the 1961 Rules has to be confined to the extent that despite assigning lower seniority such a probationer shall always rank senior to those who appointed/promoted as a result of subsequent selection/promotion. In other words the power to assign a lower seniority to a probationer has to be interpreted as stated supra so as to give full effect to provision of rule 12(1)(a) of the Rules which provides that persons appointed as a result of an earlier selection shall be senior to those who appointed as a result of subsequent selection/promotion. In view of the preceding analysis, our conclusions are as under:

(i) A probationer who has passed the departmental examination prescribed either in the rules or in the order of appointment at the end of extended period of probation shall be deemed to be a confirmed employee and shall be assigned seniority accordingly,

(ii) A probationer who has not been able to pass the departmental examination prescribed, either in the rules or in the order of appointment at the end of extended period of probation shall be deemed to be temporary employee under Rule 8(7) of the 1961 Rules

(iii) Under rule 12(1)(f) an employee would be allowed to retain original seniority where extension of period of probation is not due to any fault or shortcoming of the employee. However, where extension of period of probation is on account of fault or shortcoming on the part of the employee, in such a case the probationer has to be assigned seniority from the date if that date can be ascertained *i.e.* the date on which he clears the departmental examination or where such date cannot be ascertained, the date on which he is considered suitable for confirmation.

(iv) The discretion to confer lower seniority to a probationer under rule 12(1)(f) is confined to the extent that despite assigning lower seniority, such probationer shall always rank senior to those who are appointed in subsequent selection.

**12.** Accordingly, we answer the question referred to us by holding that the order dated 25.3.2009 passed in W.A. No. 1267/2007 and the order dated 17.12.2009 of the Division Bench in W.A. No. 510/2009 and W.A.. No. 511/2009 lay down the

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correct proposition of law only to the extent they are consistent with the conclusions arrived at by us, which have been referred to in preceding paragraph.”

5. When similar writ petitions later came up before the Division Bench of this Court in the present matters, correctness of the aforementioned Full Bench decision was doubted, primarily on the premise that it failed to consider Rule 13 of the Rules of 1975 inasmuch that the Rules of 1961 would not apply as according to its Rule 12(1)(a) the Rules of 1961 apply to the “members of the service” only. As would be evident from Para-21 of the aforesaid order dated 30.05.2019, the reference was made on following three questions, which reads as under:

“21. In view of the foregoing discussion and looking to the language of the Rules of 1960, the Rules of 1961, the Rules of 1975 and also the directions issued by the Full Bench, the direction No.2 related to Rule 8(7) of the Rules of 1961 but in fact Rule 13(7) of the Rules of 1975 would govern the issue. It is further seen that after becoming a temporary government servant, how their seniority be decided, it has not been discussed although Rules 3, 3A, 4, 5, 6, 7 of the Rules of 1960 deals the issue. In case the above Rules of 1960 is made applicable, the direction No.4 do not subsist. Similarly, the Court while interpreting Rule 12(1)(a) and Rule 12(1)(f) issued the direction that the probationers shall be assigned the lower seniority but they shall remain rank senior to those who have been subsequently selected. Rule 12(1)(a) do not apply to the “probationers” but it applies to the “members of service”. It is to further observe here that Rule 12(1)(f) deals a situation for grant of seniority on passing the departmental examination within the period of probation or within the extended period of probation. It do not apply to a case where the probationer has not passed the departmental examination even after elapse of the extended period of probation. In such circumstances, the



judgment of the Full Bench appears to be contrary to the provisions of the rules framed under proviso to Article 309 of the Constitution of India, which requires reconsideration. In view of the foregoing discussion, the following question arise for consideration:-

(1) The judgment of the Full Bench dealing the issues of probation is relying upon the Rule 8 of the Rules of 1961 although in the light of Rule 3 which deals the applicability either in the Rules of 1961 or in the Rules of 1975 on having special provision, the Rules of 1961 would not apply and in the present case, the services of the petitioners or the intervenors are governed by the Rules of 1975 and Rule 13 deals the issue of probation, however, the judgment of the Full Bench requires reconsideration in the said context.

(2) Rule 12 and Rule 12(1)(a) apply to the “members of the service” and it do not deal with the seniority of the probationers, who have not qualified the departmental examination within the period of probation or within the extended period of probation, which shall not be more than one year, however, the interpretation made in Paragraph No.4 of the direction applying those rules is justified.

(3) As per direction No.2 of the judgment of the Full Bench in the case of **Prakash Chandra Jangre (supra)**, it is held that if the probationer has not qualified the departmental examination within the period of probation or within the extended period of probation, he shall be deemed to be a temporary government servant and shall be governed by the Rules of 1960 but without dealing the issue of seniority, how they will achieve, as specified in Rules 3, 3A, 4, 5, 6, 7, the direction issued in Clause 4 of the said judgment, is not contrary to the spirit of the Rules of 1960.”

6. We have heard Mr. Naman Nagrath, learned Senior Counsel, Mr. Anshuman Singh and Mr. Manoj Kumar Sharma, learned counsel for the petitioners, Mr. Pushendra Yadav, learned Additional

Advocate General for the respondents-State and Mr. Abhishek Arjaria, learned counsel for the intervenor- Dr. Kedar Singh.

7. Mr. Naman Nagrath, learned Senior Counsel appearing for the petitioners in WP-2644-2018, WP-3706-2018 & WP-3716-2018 submitted that in view of law laid down by the Supreme Court in *Pradip Chandra Parija (supra)* and *Sakshi (supra)*, no reference could and ought to have been made by the Division Bench unless a categorical finding was recorded that the earlier decision was so “palpably wrong” or so “very incorrect” that reference was called for. The Division Bench was wrong in observing that the earlier Full Bench in *Prakash Chandra Jangre (supra) [i.e. Masood Akhtar (Dr.) (supra)]* did not consider the applicability of the Rules of 1975. It further failed to consider that the purpose of departmental examination is confirmation and not the appointment. There is basically no difference between what is prescribed in the Rules of 1961 and in the Rules of 1975, with respect to promotion and seniority. Learned Senior Counsel drew attention of the Court towards the provisions contained in Rule 8 with respect to “probation” of the Rules of 1961 and corresponding Rule 13 about “probation” in the Rules of 1975 and argued that these two provisions are in *pari materia* with each other. There is striking similarity between Rule 8(6) of the Rules of 1961 and Rule 13(6) of the Rules of 1975 in so far as the issue of probation and confirmation is concerned. The only difference between two sub-rules is with regard to entitlement of increment,

which is not at all relevant for the issue at hand. It is submitted that there is also striking similarity between Rule 8(7) of the Rules of 1961 and Rule 13(7) of the Rules of 1975. Moreover, there is also similarity between what is prescribed in Rule 12 of the Rules of 1961 and in Rule 23 of the Rules of 1975, which both provide that seniority of persons appointed to the service shall be regulated in accordance with the provisions of Rule 12 of the Rules of 1961. Since there is practically no difference between Rule 13 of the Rules of 1975 and Rule 8 of the Rules of 1961 in so far as issue regarding grant of seniority is concerned, no consequences would follow on account of non-consideration of Rule 13 of the Rules of 1975. The Division Bench erred in holding that the Rules of 1961 would not apply in the present case as the petitioners are not “members of service”. The Division Bench failed to consider that in the order of confirmation of the petitioners, the respondents have categorically mentioned that the seniority of the petitioners would be determined according to Rule 12(1)(f) of the Rules of 1961. The Division Bench in so observing lost sight of the fact that after completing maximum permissible period of probation of three years, the petitioners would be deemed to be temporary government servants as per Rule 13(7) of the Rules of 1975. But even while being temporary government servant, they continue to be entitled and eligible to appear in the departmental examination and pass the same. Upon clearing the examination as a temporary government servant, they would still be entitled to be confirmed in service. It is not in dispute that petitioners have passed

the examination and were then confirmed. Soon upon confirmation, they also become members of service under the Rules of 1975. In view of Rule 12(1)(a) read with Rule 12(1)(f) of the Rules of 1961, they are liable to be placed at the bottom of seniority with their batch but in any case they are entitled to be placed above the subsequent batch.

8. Mr. Naman Nagrath, learned Senior Counsel argued that the Division Bench was not justified in making reference to the Larger Bench by observing that the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 (for short the “Rules of 1960”) have not be considered by the earlier Full Bench which deals with the seniority. According to him, this conclusion of the Division Bench is based on misreading of Rules of 1960 which are absolutely silent about the seniority of the officers. As per Rules 2(b) and 2(d) of the Rules of 1960, the petitioners fall under temporary service, which includes “officiating and substantive service in a temporary post”. Their officiating period has to be counted for determination of their seniority as it is followed by confirmation. Reliance in this regard has been placed on the judgments of the Supreme Court in *Direct Recruit Class II Engineering Officer’s Association vs. State of Maharashtra* reported in (1990) 2 SCC 715 and *L. Chandrakishore Singh vs. State of Manipur and others* reported in (1999) 8 SCC 287. Even in the case of probationer, which is an officiating appointment followed by confirmation, the period so

spent cannot be ignored for the purpose of seniority unless a contrary rule is there. Reliance in support of this argument is placed on the judgment of Supreme Court *G.P. Doval and others vs. Chief Secretary, Government of U.P. and others* reported in (1984) 4 SCC 329. It is further argued that the only provision which gives discretion to the State Government to fix the seniority of an officer who has not been able to clear the departmental examination within the extended period of probation upto three years and has qualified such examination thereafter, is Rule 12(1)(f), which is however subject to the provision contained in Rule 12(1)(a) of the Rules of 1961. Apart from this, there is no other rule empowering the State Government to re-fix the seniority.

9. Mr. Manoj Kumar Sharma and Mr. Anshuman Singh, learned counsel appearing for the petitioners in WP-1541-2018, WP-1539-2018, WP-1712-2018 & WP-16735-2018 mostly adopted the arguments advanced by Mr. Naman Nagrath, learned Senior Counsel. Further, in addition to that, Mr. Anshuman Singh submitted that ratio of judgments of Supreme Court in the cases of *M.P. Chandoria (supra)*, *Ramkinkar Gupta (supra)* and *Om Prakash Shrivastava (supra)* would not be applicable to the present matters as these judgments were rendered upon consideration of un-amended Rule 12 of the Rules of 1961, which did not contain any restriction or ceiling to the extent upto which seniority of officers clearing departmental examination after the extended period of probation, could be curtailed.

The rule making authority while incorporating Rule 12(1)(a) in the Rules of 1961 consciously restricted the power of the State Government to assign lower seniority to an officer who passes departmental examination after the extended period of probation. This power however is limited to lowering down in the same batch and does not extend to lowering down of seniority below the officers who have been appointed in subsequent selections. Mr. Anshuman Singh, learned counsel argued that the aforementioned three judgments of the Supreme Court were passed placing reliance on the judgments reported in (2009) 13 SCC 165, (*State of HP vs. Narain Singh*) and (2017) 1 SCC 283, (*Cheviti Venkanna Yadav vs. State of Telangana*). It is however trite that amendment in law can have the effect of taking away the foundation of a judgment. Rule 12(1)(a) of the Rules of 1961 after amendment consciously uses the word “selection” for the purpose of determining *inter-se* seniority between batches and does not use the word “confirmation”. It mandates that persons appointed as a result of an “earlier selection” shall be senior to persons appointed as a result of a “subsequent selection”. Therefore those three judgments would not be applicable now. Reference to selection by the Public Service Commission at the time of initial recruitment is made for the purpose of inter-batch seniority. For this purpose, the date of confirmation is irrelevant and what is material is the date of selection. It is only within the same batch that seniority may be changed and a person may be assigned lower seniority if he fails to pass the departmental examination within the period of probation. The

Full Bench in *Masood Akhtar (Dr.) (supra)* has therefore correctly interpreted Rule 12(1)(a) read with Rule 12(1)(f) of the Rules of 1961 by giving purposive interpretation and holding that petitioner cannot be made junior to the subsequent batch even if he did not pass the departmental examination within three years of probation and at worst, he could be placed at the bottom of the same batch in which he was selected. The State of Madhya Pradesh has therefore been rightly having the practice of allowing the officers to retain the same seniority which they got in the order of merit in which their names were recommended for appointment, even if they qualify the departmental examination after the extended period of probation, but in any case, they cannot be placed below the officers who have been selected in subsequent selection.

10. Mr. Pushpendra Yadav, learned Additional Advocate General for the respondents-State contended that generally three situations emerge: (I) the persons who have cleared the examination within the initial period of probation of two years; (II) the persons who have cleared the examination within the extended period of one year and (III) the person who have cleared the examination after the expiry of extended period of probation. The earlier Full Bench in the case of *Masood Akhtar (Dr.) (supra)* had dealt with the above Situation-(I) and in that context considered Rules 8 and 12 of the Rules of 1961 and drawn the conclusion that the discretion to confer lower seniority to a probationer under Rule 12(1)(f) is confined to the extent that

despite assigning lower seniority such probationers shall always rank senior to those who are appointed in subsequent selection. But the aforesaid conclusion is valid only for the persons who have cleared the examination within the extended period of 1 years of probation. The Full Bench has passed the order for determining the seniority of the probationer who has cleared the departmental examinations within extended period of probation. It is further submitted that before passing of the aforesaid Full Bench decision, the issue of seniority of persons, who have cleared the departmental examination after the expiry of extended period of probation, was not under consideration, therefore, the said Full Bench decision cannot be applied to persons who fall under the above Situation-(III).

**11.** Learned Additional Advocate General submitted that the directions of the Full Bench have to be understood in the context in which the matter was referred to it for consideration, i.e. the conflicting opinions given by the two Division Benches of this Court, wherein both the Division Benches dealt with the situation where probationers cleared the examination during the extended period of one year of probation and the Full Bench answered accordingly. But the present case is related with the persons who have not cleared the examination even in the extended period of probation and despite that they are claiming seniority over the persons of subsequent batch, who have cleared the examination in normal period or extended period of probation. The cases of persons who have not cleared the examination



even within the extended period of probation would be governed by Rule 13(7) of the Rules of 1975 and Rule 8(7) of the Rules of 1961, wherein a probationer who has neither been confirmed nor a certificate issued in his favour nor discharged from the service, shall be deemed to have been appointed as a temporary government servant w.e.f. the date of expiry of probation as per the Rules of 1960. However, after being appointed as temporary servant under the Rules of 1960, he is not governed by Rule 12 of the Rules of 1961 as the same deals with seniority of member of service and probationer. It is further contended that there could be a situation where a person who cleared the departmental examination within normal period of probation and person who does not clear the departmental examination within a period of two years plus one year and is a temporary government servant after the period of expiry of probation and does not clear the department examination for the period of ten years and would come after ten years to claim seniority with his batch. Such a situation is not envisaged under the Rules as the same would lead to total chaos and the state of utter confusion and would be very discouraging for the persons who clear the department examination within the period of probation as provided under the Rules. Learned Additional Advocate General therefore submitted that by virtue of Rule 13(7) of the Rules of 1975 and Rule 8(7) of the Rules of 1961, the status of government servant who has not cleared the examination even within the extended period of probation would be that of a temporary government servant. He would from then onwards cease to

be part of the regular service and, therefore, Rule 12 of the Rules of 1961 would be completely inapplicable to him.

12. Mr. Abhishek Arjaria, learned counsel for the intervenor- Dr. Kedar Singh in WP-1539-2018, submitted that the Full Bench in *Masood Akhtar (Dr.) (supra)* considered only two questions, which would be evident from Para-4 of the judgment itself i.e. (i) the discretion conferred on appointing authority under Rule 12(1)(f) to assign lower seniority to “probationer” who has either not successfully completed the period of probation or has not passed the department examination and (ii) interpretation of Rule 12 of the Rules of 1961. The Full Bench held that the persons, who were not able to qualify the departmental examination within the extended period of one year, would be covered by Rule 8(7) of the Rules of 1961 and therefore would be deemed to have been appointed as temporary servant w.e.f. the date of expiry of probation and their condition of service shall be then governed by the Rules of 1960. The questions framed by the Full Bench were answered in Paras-10 and 11 of the order. Even the conclusion No.(iv) in Para-11 arrived at by the Full Bench talks about “probationer” and not about the “temporary government servant”. A bare reading of the entire judgment of the Full Bench thus makes it clear that the issue related to probationer, who has cleared the departmental examination within the extended period of time, has been considered and answered. As regards applicability of the Rules of 1960, Mr. Abhishek Arjaria, learned counsel argued that a

bare reading of provisions contained in Rule 8(7) of the Rules of 1961 and also in Rule 13(7) of the Rules of 1975, would make it clear that the government servant who has failed to clear the departmental examination in accordance with Rule 8(7) within the extended period of one year, would cease to be a government servant and the Rules of 1961 would cease to apply to him. On such cessation by virtue of law, Rules of 1960 will come into the effect and such an employee will be treated in the temporary service. He further urged that Rule 1(2) speaks about the applicability of the Rules and clearly stated that the Rules of 1960 would be applicable to all the persons who are holding a civil post under the State Government. A temporary employee cannot claim a post in a particular batch or seniority above any person, who is in regular employment of the State within the same service. Rule 7 of the Rules of 1960 specifically mentions that any person who is in quasi permanent service will be eligible for permanent appointment only on the occurrence of the vacancy in the specified post. Thus it is very clear that no post can be held or a lien be created for such temporary employee. Sub-rule (2) of Rule 7 of the Rules of 1961 also specifies the procedure about the quasi permanent servant, who had cleared the examination and became eligible for a permanent employment, according to which a merit list be prepared of all such quasi permanent servants and then they will be placed for permanent appointment in accordance with the vacancies arising in the department.

13. It is submitted that from interpretation of Rule 7 of Rules of 1960, it is very clear that a quasi permanent employee would be entitled for a fresh appointment in the service only from the date when he overcomes all the shortcoming i.e. from the date of clearing the departmental examination. It is also to be noted that once any selected candidate is declared as temporary employee, then although the applicability of Rules of 1961 would come to an end but his fresh appointment in accordance with Rule 7 of the Rules of 1960 cannot be related back to his earlier appointment or probation period. It is urged that Rule 11(1) of the Rules of 1960 specifically talks about benefits available to a temporary/quasi permanent servant on being appointed to a permanent post and the rule making authority has deliberately excluded the benefit of seniority to such an employee. At the transition stage (i.e. when the quasi permanent employee clears the departmental examination), he would be given a fresh appointment on the vacant post available at that time by preparing a seniority list amongst all quasi permanent servants.

14. We have given our anxious consideration to the rival submissions with regard to the earlier decision of the Full Bench in *Masood Akhtar (Dr.) (supra)* and also the Division Bench order dated 30.05.2019 making reference to the Larger Bench.

15. The order of reference is founded on the conclusion arrived at by the Division Bench in para-21 of its order that once a probationer,

by virtue of Rule 13(7) of the Rules of 1975, has neither been confirmed nor a certificate issued in his favour nor discharged from the services under Sub-Rules (4) and (5) of Rule 13 of the Rules of 1975, would be deemed to have been appointed as a temporary Government servant on expiry of a period of probation. His service conditions would then be governed by the Rules of 1960, therefore, the conclusion arrived at by the Full Bench in *Masood Akhtar (Dr.) (supra)* in para 11(iv) of its judgment that by virtue of Rule 12(1)(f) of the Rules of 1961, that such probationer shall always rank senior to those, who are appointed in subsequent selection, cannot be justified. In order to fully appreciate the conclusion so arrived at and three questions so framed in para-21 of the reference order, we deem it appropriate to compare the relevant provisions of the Rules of 1961 and the Rules of 1975, which read as under:-

<b>Rules of 1961</b>	<b>Rules of 1975</b>
<p><b>8. Probation. -</b></p> <p>(1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.</p> <p>(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.</p> <p>(3) A probationer shall undergo such training and pass such departmental examination during the period of his probation as may be prescribed.</p> <p>(4) The services of a probationer may be terminated during the period of probation if in the</p>	<p><b>13. Probation. -</b></p> <p>(1) Every person directly recruited to the service shall be appointed on probation for a period of two years.</p> <p>(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.</p> <p>(3) The probationer shall undergo the prescribed training and pass the prescribed departmental examination by the higher standard during the period of his probation.</p> <p>(4) The services of the probationer may be terminated during the period of probation, if in the</p>

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opinion of the appointing authority he is not likely to shape into a suitable Government servant.

opinion of the appointing authority, he is not likely to shape into a suitable Government servant.

- (5) The services of a probationer who has not passed the departmental examination or who is found unsuitable for the service or post may be terminated at the end of the period of his probation.
- (5) The services of a probationer who does not pass the prescribed departmental examinations or who is found unsuitable for the service may also be terminated at the end of the period of probation.
- (6) On the successful completion of probation and passing of the prescribed departmental examination, if any, the probationer shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed, either a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and that as soon as permanent post becomes available he will be confirmed.
- (6) On the successful completion of probation and the passing of the prescribed departmental examinations, the probationer shall be confirmed in the service provided permanent vacancies exist for him otherwise a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and as soon as permanent post become available he will be confirmed.
- The probationer shall not draw any increments until he is confirmed. On confirmation his pay will be fixed with reference to the total length of service. If the probationary period is extended, government will decide at the time of confirmation whether arrears of increment shall be paid or not. Such arrears shall ordinarily be paid when the extension of the probationary period is due to no fault of the probationer.
- (7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule (4), shall be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960.
- (7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6) above nor discharged from service under sub-rules (4) and (5) above, shall be deemed to have been appointed as a temporary government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh (Temporary and Quasi-Permanent Service) Rules, 1960.

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**12. Seniority. –**

The seniority of the members of a service or a distinct branch or group of posts of that service shall be determined in accordance with the following principles, viz –

**(1) Seniority of Direct Recruits and Promotees.-**

- (a) The seniority of persons directly appointed to a post according to rules shall be determined on the basis of the order of merit in which they are recommended for appointment irrespective of the date of joining. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection.
- (b) Where promotions are made on the basis of selection by a Departmental Promotion Committee, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the committee.
- (c) Where promotions are made on the basis of seniority subject to rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where however a person is considered as unfit for promotion and is superseded by a junior, such persons shall not, if subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.
- (d) The seniority of a person whose case was deferred by the Departmental Promotion Committee for lack of Annual Character Rolls or for any other reasons but subsequently found fit to be promoted from the date

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**23. Seniority. –**

The seniority of persons appointed to the service shall be regulated in accordance with the provisions of Rule 12 of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961.

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on which his junior was promoted, shall be counted from the date of promotion of his immediate junior in the select list or from the date on which he is found fit to be promoted by the Departmental Promotion Committee.

- (e) The relative seniority between direct recruits and promotees shall be determined according to the date of issue of appointment/promotion order :  
 Provided that if a person is appointed/promoted on the basis of roster earlier than his senior, seniority of such person shall be determined according to the merit/select/fit list prepared by the appropriate authority.
- (f) If the period of probation of any direct recruit or the testing period of any promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation testing period successfully, or whether he should be assigned a lower seniority.
- (g) If orders of direct recruitment and promotion are issued on the same date, promotee persons enblock shall be treated as senior to the direct recruits.

A comparison of Rule 8(7) of the Rules of 1961 with Rule 13(7) of the Rules of 1975 would clearly show that there is, in fact, no difference between those two sub-rules, as both provide that if a probationer has neither been confirmed, nor has he been issued a certificate under sub-rule (6) of those Rules, he shall be deemed to have been appointed as a temporary government servant with effect from the date of expiry of probation and his conditions of service then



would be governed by the Rules of 1960. Therefore, in our considered view, the opinion expressed by the Division Bench while making reference in para-21 of its order that in view of the above fact, Rule 13(7) of the Rules of 1975 would govern the issue and not the Rule 8(7) of the Rules of 1961 and so, the conclusion arrived at by the Full Bench in para 11(iv) of its judgment in *Masood Akhtar (Dr.) (supra)* may not subsist, does not sound convincing. Still further, the Sub-Rules (1) to (6) of Rule 8 of the 1961 Rules and Sub-Rule (1) to (6) of Rule 13 of the Rules of 1975 show a striking similarity between them except with a minor addition in Sub-Rule (6) of Rule 13 of the 1975 Rules which provides that the probationer shall not draw any increments until he is confirmed and that on confirmation, his pay would be fixed with reference to the total length of service and if the probation period is extended, the Government will decide at the time of confirmation whether arrears of increment shall be paid or not. But this additional part of Sub-Rule (6) of Rule 13 of the Rules of 1975 does not have any bearing on the question with which we are concerned in the present set of cases. However, the view taken by the Division Bench that once the probationer has not cleared the prescribed departmental examination even within the extended period of probation, he would be deemed to be a temporary Government servant governed by the Rules of 1960 and therefore the conclusion arrived at in para 11(iv) of the Full Bench is not correct, also cannot be supported because the Rules of 1960 do not, in any case, provide

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for the manner in which the seniority of the persons recruited under the Rules of 1975 would be regulated.

16. In view of the above, we have to now examine the first question formulated by the Division Bench in the order of reference, whether the judgment of the Full Bench in *Prakash Chandra Jangre (supra)* [i.e. *Masood Akhtar (Dr.) (supra)*] requires reconsideration because it is based on interpretation of Rule 8 of the Rules of 1961 although in the light of Rule 3 of the Rules of 1961, which deals with its applicability or the Rules of 1975, the Rules of 1961 would not apply and that in the present case, the services of the petitioners/the intervenors are governed by the Rules of 1975 and since Rule 13 of the Rules of 1975 deals with the issue of probation and therefore, Rule 8 of the Rules of 1961 could not be applied. The question No.(1) does not appear to be clearly worded but what perhaps the learned Division Bench intended to convey was that since Rule 3 of the Rules of 1961 provides that these Rules apply to every person who holds a post or is a “member of a service” and the petitioners or the intervenors having not qualified the departmental examination even during the extended period of probation, would not become “member of service”, therefore, Rules of 1961 would not apply to them. In question No.(1) the learned Division Bench appears to have alluded itself to the idea that that Rule 13 of the Rules of 1975 would apply to a probationer and not the Rule 8 of the Rules of 1961 whereas on comparison of these two Rules, we have seen that both the set of the Rules are

exactly identically worded in regard to all their sub-rules, except for a minor and insignificant difference. We shall, however, now examine the question No.(1), in whatever way it has been formulated, by splitting it into two parts.

17. Insofar as the applicability of the Rules of 1961 is concerned, its Rule 3 does not *stricto sensu* provide that it shall only apply to a member of service but it rather begins by providing that “The rule shall apply to every person who holds a post or is a member of a service in the State”. The Rule 3 of the 1961 Rules reads, thus:-

“3. **Scope of application.** – The rule shall apply to every person who holds a post or is a member of a service in the State, except –

- (a) person whose appointment and conditions of employment are regulated by the special provisions of any law for the time being in force;
- (b) persons in respect of whose appointment and conditions of service special provisions have been made, or may be made hereinafter by agreement;
- (c) persons appointed to the Madhya Pradesh Judicial Service:

Provided that in respect of any matter not covered by the special provisions relating to them, their services or their posts, these rules shall apply to the persons mentioned in clauses (a), (b) and (c) above.”

From a perusal of Rule 3 (supra) it would be evident that this Rule shall apply not only to a member of service in the State but also to every person who holds a post. Use of ‘or’ here is disjunctive. But applicability of the rule excluded, as it has carved out an exception, qua those (a) whose appointment and conditions of service are

regulated by the special provisions of any law for the time being in force; (b) in respect of whose appointment and conditions of service special provisions have been made and (c) who are appointed to the Madhya Pradesh Judicial Service. But when we compare the Rules of 1961 with the Rules of 1975 in regard to their applicability, the Rule 3 of the Rules of 1975 provides as under:-

**“3. Scope and Application.** - *Without prejudice to the generality of the provisions contained in the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961, these rules shall apply to every member of the service”.*

In other words, the Rules of 1975 would govern the conditions of service of the members of the Madhya Pradesh State Administrative Services but without prejudice to the generality of the Rules of 1961. What therefore can be deduced from this is that the Rules of 1961 shall continue to apply except insofar as special provisions have been made in the Rules of 1975. Therefore, it continues to be applicable to those who hold a post.

**18.** Let us now therefore come to the second part of the question No.(1) according to which, the case of the probationer should have been considered in the light of Rule 13 of the Rules of 1975 and not Rule 8 of the Rules of 1961. At the cost of repetition, it may be stated that not only there is no material difference between these two provisions under different set of Rules but they both deal with the case of the probationer in the same way except Sub-Rule (1) of Rule 8 of the Rules of 1961 by providing that a direct recruit shall ordinarily be

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placed on probation for such period as may be prescribed but Sub-Rule (1) of Rule 13 of the Rules of 1975 by specifically providing that a direct recruit shall be appointed on probation for a period of two years. In other words, while Rule 8(1) of the Rules has provided that a direct recruit shall ordinarily be placed on probation as may be prescribed, the Sub-Rule (1) of Rule 13 of the Rules of 1975 has specifically provided probation period of two years. It is this Rule, which would prevail so far as the initial period of probation is concerned. Thereafter, the Sub-Rule (2) of Rule 8 of the Rules of 1961 has provided that the appointing authority may for sufficient reasons, extend the period of probation by a further period not exceeding one year but when we compare this with Sub-Rule (2) of Rule 13 of the Rules of 1975 it is exactly identically worded. The Sub-Rule (3) in both the set of Rules provides that the probationer shall undergo the prescribed training and shall pass departmental examination during the period of probation. Rule 8(4) of the Rules of 1961 as well as Rule 13(4) of the Rules of 1975, both the set of Rules, have given the discretion to the appointing authority or the Government to terminate the services of a probationer during the period of probation if in its opinion he is not likely to shape into a suitable Government servant. Sub-Rule (5) of both the set of Rules again thereafter provide that services of a probationer (i) who has not passed the departmental examination or (ii) who is found unsuitable for the service or post, may be terminated at the end of the period of his probation. We are dealing with a case of those who were probationers but were not been

able to pass the departmental examination even during the extended period of probation, yet the appointing authority/Government, despite having the specific power under Sub-Rule (5) of Rule 8 of the Rules of 1961 and/or under Sub-Rule (5) of Rule 13 of the Rules of 1975 to terminate their services, consciously decided not to do so and has allowed them to continue in service, which is where the Sub-Rule (7) of both the set of Rules would come into play thereby subjecting the conditions of service of the directly recruited employees falling in this category of Rules of 1960. All this while they continue to be eligible and are entitled to appear in departmental examination and on clearing such examination, are entitled to be confirmed.

19. In our considered opinion, it would have been ideal if the Full Bench while answering the reference in *Masood Akhtar (Dr.) (supra)* had also specifically examined Rule 13 of the Rules of 1975 but the mere fact that the Full Bench only considered Rule 8 of the Rules of 1961 and not Rule 13 of the Rules of 1975, would not make any difference insofar as the interpretation of the Rule that we have made and further so far as the question of seniority of such Government servants, who are at that stage considered as temporary Government servant, is concerned, even while observing that the Full Bench in *Masood Akhtar (Dr.) (supra)* ought to have considered the Rule 13 of the Rules of 1975, we are inclined to hold that its non-consideration does not in any manner affect the correctness of the conclusion arrived at by the Full Bench. And now when we have considered and

interpreted the Rule 13 of the Rules of 1975 we have also arrived at the same conclusion as the Full Bench has recorded in *Masood Akhtar (Dr.) (supra)* on harmonious interpretation of Rule 12(1)(a) and 12(1)(f) of the Rules of 1961. In any case, non-consideration of Rule 13 of the Rules of 1975 would not make any material difference also for an additional reason which is that Rule 23 in the Rules of 1975 itself specifically provides that “the seniority of persons appointed to the service shall be regulated in accordance with the provisions of Rule 12 of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961”.

20. Adverting now to the question No.(2) formulated in the order under reference as to whether Rule 12, and Rule 12(1)(a) in specific, would apply to the “members of the service” and it does not deal with the seniority of the probationers, who have not qualified the departmental examination within the period of probation or within the extended period of probation, and therefore, the conclusion recorded in para 11(iv) of the direction is justified. It appears that in paraphrasing this question, the Division Bench was guided by the ratio of the three Supreme Court judgments in *M.P. Chandoria (supra)*, *Ramkinkar Gupta (supra)* and *Om Prakash Shrivastava (supra)*, which have been relied upon even before us by the learned Additional Advocate General and the learned counsel for the intervenors.

21. The Supreme Court in *M.P. Chandoria (supra)*, the earliest of the three judgments rendered on 29<sup>th</sup> March, 1996, while dealing with the case of direct recruit, who failed to qualify the prescribed test even within the extended period of probation but confirmed only after he passed the test, while dealing with Rule 12 of the Rules of 1961 existing at that point of time, concluded that his seniority shall be reckoned from the date of passing the prescribed test and not from the date of joining the services. Again interpreting the Rule 12 of the Rules of 1961, this very view also reiterated by the Supreme Court in *Ramkinkar Gupta (supra)* delivered on 17<sup>th</sup> September, 1999 relying upon *M.P. Chandoria (supra)*. On interpretation of the very same Rule 12 of the Rules of 1961 and relying upon its earlier two decisions in *M.P. Chandoria (supra)* and *Ramkinkar Gupta (supra)*, the same view was again expressed by the Supreme Court in *Om Prakash Shrivastava (supra)* in its judgment dated 19<sup>th</sup> April, 2005. But what is significant to notice here is that the view taken by the Full Bench in *Masood Akhtar (Dr.) (supra)* is based on interpretation of unamended Rule 12 of the Rules of 1961, which was amended by way of substitution vide Notification dated 2<sup>nd</sup> April, 1998. This amendment has taken away the very basis of these three judgments. This has made all the difference in regard to placement of the direct recruits, who inspite of having failed to qualify the prescribed test/departmental examination within the extended period of probation i.e. three years and appointing authority/Government having decided not to terminate their services, despite having power to do so under



Sub-Rule (5) of Rule 8 of Rules of 1961 read with Sub-Rule (5) of Rule 13 of the Rules of 1975, as now in the amended Rule 12 of the Rules of 1961, upon their passing the examination even at the later stage, in view of amended Rule 12(1)(a) of the said Rules that now the seniority of persons directly appointed to a post, according to the rules, shall be determined on the basis of the order of merit in which they are recommended for appointment irrespective of the date of joining and that the persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection with Rule 12(1)(f) of the said Rules providing that if the period of probation of any direct recruit or the testing period of any promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation testing period successfully, or whether he should be assigned a lower seniority.

22. The Full Bench in *Masood Akhtar (Dr.) (supra)* has, while making a conjoint reading of the Rule 12(1)(a) and 12(1)(f) of the Rules of 1961 has placed harmonious interpretation so as to reconcile them, which would be evident from the conclusion arrived at by the Bench in para 11 of its judgment, as reproduced above in para 4 of this judgment. But the question that has also to be additionally answered in the light of the observation of the Supreme Court in *Warad Murti Mishra (supra)* is: as to whether it was permissible for

the Full Bench in *Masood Akhtar (Dr.) (supra)*, despite the Supreme Court consistently holding in above referred to three judgments that direct recruits not having qualified the departmental examination even within the extended period of service, could not be treated as member of service and therefore cannot claim seniority of that period?

23. In order to appreciate this question, we need to compare the unamended Rule 12 of the Rules of 1961 on interpretation of which the ratio of the aforementioned three judgments of the Supreme Court in *M.P. Chandoria (supra)*; *Ramkinkar Gupta (supra)* and *Om Prakash Shrivastava (supra)* is founded, with the newly inserted Rules 12(1)(a) and (f) of the Rules of 1961 by way of substitution, which have been interpreted by the Full Bench in *Masood Akhtar (Dr.) (supra)*, insofar as the question of seniority is concerned. The unamended and the amended Rule 12 of the Rules of 1961 insofar as they are relevant for the purposes of deciding the present matter, read as under:-

<b>Unamended Rule 12 of the Rules of 1961</b>	<b>Amended Rule 12 of the Rules of 1961 (substituted by No.4, dated 2-4-1998)</b>
<p><b>12. Seniority:</b> The seniority of the members of service of a district branch or group of posts of that service shall be determined in accordance with the following principles, viz. -</p> <p><b>(a) Direct recruits:</b></p> <p>(i) The seniority of a directly recruited Government servant appointed on probation, shall count during his probation from the date of appointment, viz.:</p>	<p><b>12. Seniority. –</b> The seniority of the members of a service or a distinct branch or group of posts of that service shall be determined in accordance with the following principles, viz –</p> <p><b>(1) Seniority of Direct Recruits and Promotees.-</b></p> <p>(a) The seniority of persons directly appointed to a post according to rules shall be determined on the basis of the order of merit in which they are recommended for appointment irrespective of the</p>

[43]

date of joining. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection.

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- (ii) the same order of inter se seniority shall be maintained on the confirmation of such direct recruits if the confirmation is ordered at the end of the normal period of probation. If, however, the period of probation of any direct recruits is extended, the appointing authority shall determine whether he should be assigned the same seniority as would be assigned to him if he had been confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority.
- (f) If the period of probation of any direct recruit or the testing period of any promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation testing period successfully, or whether he should be assigned a lower seniority.

24. It would be evident from the comparative reading of the unamended Rule 12 with the amended Rule 12 of the Rules of 1961 that while in the old Rule 12 of the Rules of 1961, there is no provision which would restrict the powers of the appointing authority/Government by providing that the persons appointed as a result of an earlier selection shall always rank senior to those appointed in a subsequent selection. In the new Rule 12 of the Rules of 1961 however it is specifically provided, which would be evident from Rule 12(1)(a), by stipulating that “*persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection*”. It would be therefore evident from the above that the amendment in Rule 12 has taken away the very basis of the aforementioned three judgments of the Supreme Court in *M.P. Chandoria (supra)*, *Ramkinkar Gupta (supra)* and *Om Prakash*

*Shrivastava (supra)* and, therefore, ratio of those judgments cannot be applied to the present case. The rule making authority has now in the amended Rule 12 categorically provided that the persons appointed as a result of an earlier selection shall always rank senior to those appointed as a result of subsequent selection, thus manifesting a different intention than the one expressed in unamended Rule 12. Reference in this connection may be made to the judgment of the Supreme Court in *Agricultural Income Tax Officer and another vs. Goodricke Group Limited and another* reported in (2015) 8 SCC 399. Reliance in that case was placed on an earlier judgment of the Supreme Court in *Buxa Dooars Tea Co. Ltd. Vs. State of W.B.* reported in (1989) 3 SCC 211, wherein two charging provision, namely, Section 4-B of the West Bengal Rural Employment and Production Act, 1976 and Section 78-C of the West Bengal Primary Education Act, 1973, levying cess on production of tea, were struck down as unconstitutional on the ground that the basis of levy was not covered under the legislative competence of the State Legislature under Schedule VII List II Entry 49 and that the said levy encroached upon the legislative field covered under Schedule VII List I Entry 84 and further contravened Article 301 and was not saved by Article 304(b) of the Constitution of India. However, subsequently by an amendment the defect was cured by changing the basis of the charging provision (that is, by levying cess on the yield or income from a given unit of land) and bringing the levy within the legislative competence of the State Legislature. The two cesses by the said amendment were

imposed retrospectively from 1981 and 1984 respectively. However, when the judgment of the Supreme Court in ***Buxa Dooars Tea Co. Ltd. (supra)*** was relied in the aforesaid case of ***Agricultural Income Tax Officer and another (supra)***, it was held as under:

“12. In our view, the purport of these two sections is clear. Whatever may have been the subject-matter of *Buxa Dooars Tea Co. Ltd. (supra)*, that is the subject-matter of the two Acts as originally enacted, will now, notwithstanding the interim order or the final judgment in *Buxa Dooars Tea Co. Ltd. (supra)* be deemed to have been validly levied, collected and paid as rural employment cess and education cess under the Amended Act.

13. This being the case, it is clear that Section 4-B and Section 78-C have changed the basis of the law as it existed when *Buxa Dooars Tea Co. Ltd. (supra)* was decided and consequently, the judgment and interim order passed in *Buxa Dooars Tea Co. Ltd. (supra)* will cease to have any effect. Also, what would have been payable under the Act as unamended, is now payable only under the 1989 Amendment Act which has come into force with retrospective effect.”

25. Reference can also be made to another judgment of the Supreme Court on the similar subject in ***State of Madhya Pradesh and another vs. Kedi Great Galeon Limited and another*** reported in **(2017) 13 SCC 836**. In the aforesaid case, in the writ petition before this Court, argument was made that in view of judgment of the Supreme Court in ***M/s. Lilasons Breweries (Pvt.) Ltd. and another vs. State of Madhya Pradesh and others*** reported in **(1992) 3 SCC 293**, Rule 4 (41) of the M.P. Distillery Rules, 1995 was declared as *non est* and void as Rule 22 of old M.P. Brewery Rules, 1970 has already been declared ultra vires by the Supreme Court, it would be unnecessary to

seek similar relief of striking down its successor Rule 4(41). Even though no specific prayer was made in the writ petition to that effect, but the High Court upholding the aforesaid argument struck down Rule 4(41) of the M.P. Distillery Rules, 1995. Apart from other grounds, the Supreme Court set aside the judgment of the High Court also on the premise that subsequent amendment made in Section 28 of the M.P. Excise Act, 1915 had the effect of changing the very basis of the earlier judgment. It would be useful to extract following observations of the Supreme Court from Para-43 of the report:

“43. The judgment in *Banerjee Chandra Banerjee vs. State of M.P.*, reported in (1970) 2 SCC 467 was delivered on 19.08.1970. there has been amendment in Section 28 by Madhya Pradesh Act 6 of 1995 by which provision, specific provision requiring the license to lift for sale, the minimum quantity of country spirit or Indian-made liquor, fixed for his shop and to pay the penalty at the prescribed rate on the quantity of liquor short lifted, has been brought in the statute book. The scheme of the M.P. Excise Act, 1915 having been amended by the aforesaid 1995 Act, the very basis of *Banerjee (supra)* is knocked down and cannot be relied on in view of changed statutory scheme.....”

26. It is a trite that a judgment for the purpose of precedent can be relied upon for the proposition of law that it actually decided and not for what can be logically deduced from it, for difference of a minor fact would make a lot of change in the precedential value of the judgment. The House of Lords in their celebrated decision reported as [1901] A.C. 495 titled *Quinn v. Leathem* aptly observed: (16 of 21) “every judgment must be read as applicable to the particular facts proved, or assument to be proved, since generality of the expressions

which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that any seem to follow logically from it....”.

27. It is settled position of law that while interpreting a statute different parts of a section of the rule have to be harmoniously construed so as to give effect to the purpose of the legislation and the intention of the legislature. Even the Full Bench in its judgment in *Masood Akhtar (Dr.) (supra)* while relying upon the judgment of the Supreme Court in *British Airways vs. Union of India, (2002) 2 SCC 95* has observed that sub-sections of a section must be read as parts of an integral whole and as being interdependent and an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy. As held by the Supreme Court in *Raj Krushna Bose vs. Binod Kanungo and others, AIR 1954 SC 202*, a statute must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between the two sections of the same Act and

whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. The Supreme Court in *Madanlal Fakirchand Dudhediya vs. Shree Changdeo Sugar Mills Ltd.*, AIR 1962 SC 1543 has held that the rule of construction is well settled that when there are in an enactment two provisions, which cannot be reconciled with each other, they would be so interpreted that if possible the effect should be given to both. This is what is known as “rule of harmonious construction”.

28. Unlike the old Rule 12 of the Rules of 1961, the new Rule 12 of the Rules of 1961 governs the discretion of the appointing authority/Government, restricting its power to assign the lower seniority to those who qualify the departmental examination some time after expiry of the period of probation and gives power to it to lower down the seniority of such an employee falling in this category but with a rider that he shall be assigned the bottom seniority with his own batch but in any case shall be placed above the direct recruits from the subsequent batch. The employee, who is directly recruited with reference to Rule 8(1) of the Rules of 1961 or Rule 13(1) of the Rules of 1975 but is unable to qualify the departmental examination even within the extended period of probation of three years and yet not discharged from service by the appointing authority at the end of the period of probation despite it having power to do so under Rule 8(5) of the Rules of 1961 and Rule 13(5) of the Rules of 1975, his service conditions, as per the mandate of Rule 8(7) of the Rules of



1961 or Rule 13(7) of the Rules of 1975 would then be governed by the Rules of 1960. However, this situation would continue only for the interregnum period till he qualifies the departmental examination. It must, therefore, be construed that the person falling in this category as per Rule 8(1) of the Rules of 1961 continues to be “*a person appointed to a service or post by direct recruitment*” or Rule 13(1) of the Rules of 1975, as “*every person directly recruited to the service*” as the Government, despite having power under Rule 8(5) of the Rules of 1961 or Rule 13(5) of the Rules of 1975, to terminate his services upon his failure to pass the departmental examination even within the extended period of probation, having taken a conscious decision to retain him in service. Obviously, his recruitment was made against a post and he continues to occupy that post even after expiry of extended period of probation. He is eventually confirmed when he passes the departmental examination. Since he continues to work on the same post on which he was initially appointed and continuing to draw pay against such post, there would not arise any question of his needing to retain any lien. Argument to that effect raised on behalf of the Intervener does not have any force and is rejected. He shall continue to be entitled to appear in departmental examination even thereafter and upon passing the same, shall be confirmed in service. If and when he would qualify such examination and is confirmed, he would become a member of service with reference to his original appointment and in that case, would be continued in service and consequently, would be assigned the seniority below his batchmates,

who have already earlier qualified the departmental examination. This is because once such an employee has passed the departmental examination, he would then cease to be subject to the Rules of 1960 and would be governed from that stage onward by the Rules of 1961 and/or Rules of 1975, as the case may be. Even otherwise, there is no provision in anywhere in the Rules of 1960 with regard to fixation and regulation of seniority of the employees falling in this category.

29. We are in taking that view fortified from the ratio of the Constitution Bench judgment of the Supreme Court in *Direct Recruit Class II Engineering Officer's Association (supra)* wherein, in para-13, it was held as under:-

“13.....the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies.....”

Thereafter, the Supreme Court, in the same very para, further held that:-

“.....The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16 of the Constitution of India. If an appointment is made by way of stopgap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment.....”

After holding so, the Supreme Court further held that:-

“.....But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is

no reason to exclude the officiating service for purpose of seniority.....”

30. The Supreme Court in *L. Chandrakishore Singh (supra)* in para 15 has held as under:-

“It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list.....”

31. In view of the above discussion, we are inclined to agree with the view expressed by the Full Bench in *Masood Akhtar (Dr.) (supra)* although we have recorded our own additional reasons in support of such conclusion. Since we agree with the ultimate conclusion arrived at by the Full Bench in *Masood Akhtar (Dr.) (supra)* despite giving additional reasons for our view, we are not persuaded to hold that the Full Bench has not correctly answered the reference. We therefore see no justification to further refer this matter to a Larger Bench consisting of five Judges.

Referred questions having thus been answered, let the writ petitions be now listed before the Division Bench for hearing on merits as per Roster.

(Mohammad Rafiq) (Rajeev Kumar Dubey) (Vijay Kumar Shukla)  
Chief Justice Judge Judge

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